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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC JAMES RODRIGUEZ,

Defendant and Appellant.

2d Crim. No. B294707  
(Super. Ct. No. 2013008125)  
(Ventura County)

Eric James Rodriguez appeals a postjudgment order denying his petition for resentencing, filed pursuant to Proposition 36 (Pen. Code, § 1170.126).<sup>1</sup> In 2014, appellant was convicted by jury of active participation in a criminal street gang (count 1; § 186.22, subd. (a)(1)), assault with a deadly weapon (count 2; § 245, subd. (a)(1)), and criminal threats (count 3; § 422). The jury found true allegations that appellant personally used a deadly weapon (§ 12022, subd. (b)(1)) on count 1,

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<sup>1</sup> All statutory references are to the Penal Code.

personally inflicted great bodily injury (§ 12022.7, subd. (a)) on counts 1 and 2, and that counts 2 and 3 were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)). Appellant admitted three prior prison terms (§ 667.5, subd. (b)), two prior serious felonies (§ 667, subd. (a)(1)), and that he had suffered two prior strike convictions within the meaning of the “Three Strikes” law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). The trial court sentenced appellant on the criminal threats and assault counts (counts 2-3) to consecutive 25-years-to-life terms, plus 36 years on the great bodily injury, gang, and prior conviction enhancements, for a total aggregate term of 86 years to life. In 2015, we affirmed the conviction in an unpublished opinion. (*People v. Rodriguez* (July 16, 2015, B259657) [nonpub. opn.] )

In 2018, appellant filed a Proposition 36 petition to recall the three strikes sentence. (§ 1170.126.) The trial court denied the petition on three grounds. First, appellant did not file the petition for resentencing within two years after the effective date of Proposition 36 (November 7, 2012) and appellant failed to make a good cause showing for the four-year delay in filing the petition. (§ 1170.126, subd. (b).) Second, appellant failed to include a statement of all currently charged felony convictions and all prior convictions alleged and proved as prior strikes. (§ 1170.126, subd. (d).) Third, appellant was ineligible for resentencing because he is currently serving an indeterminate life sentence for a serious and violent felony (§§ 1192.7, subds. (c)(8), (c)(23), 667.5, subd. (c)(8)) and appellant personally used a deadly weapon (knife) and personally inflicted great bodily injury in the commission of the offenses. (§ 1170.126, subd. (e)(1).)

We appointed counsel to represent appellant in this appeal. After counsel's examination of the record, he filed a brief raising no issues.

On March 14, 2019, we advised appellant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. On April 2, 2019 appellant submitted a letter brief stating that his first strike conviction (§ 422; criminal threats) occurred in 1998 (Ventura County Sup. Ct., case no. CR44680A), and the offense was not listed as a serious or violent felony until March 8, 2000 when Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, added the criminal threats statute to section 1192.7's list of serious felonies. (See *People v. Johnson* (2015) 61 Cal.4th 674, 684 (*Johnson*).) Whether a prior offense was a serious and/or violent felony is based on the current definitions of serious and/or violent felonies, not the definitions in place at the time the prior offense was committed. (*Ibid.*; *People v. Alvarez* (2002) 100 Cal.App.4th 1170, 1179; *People v. James* (2001) 91 Cal.App.4th 1147, 1150.) "Consequently, a person being sentenced with respect to a third felony offense committed on or after March 8, 2000, whose prior felonies had been reclassified by Proposition 21 as serious or violent felonies, [can] be sentenced as a third strike offender, despite the fact that the prior offenses were not classified as serious or violent at the time they were committed." (*Johnson, supra*, 61 Cal.4th at p. 684.) Appellant committed his current offenses on March 3, 2012, well after the passage of Proposition 21. The denial of appellant's petition for a more lenient sentence did not violate his constitutional right against ex post facto laws. (*John L. v. Superior Court* (2004) 33 Cal.4th 158,

172–173; *Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1286–1287.)

We have reviewed the entire record and are satisfied that appellant’s counsel has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment (order denying petition for resentencing) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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Richard B. Lennon, Acting Executive Director, under  
appointment by the Court of Appeal for Defendant and Appellant.

No appearance for Respondent.